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REGULATORY AUTH.

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OFFICE OF THE
EXECUTIVE SECRETARY
September 15, 2000

Guy M. Hicks
General Counsel

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David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37248

Re: *Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. pursuant to Section 252(b) of the Telecommunications Act of 1996*
Docket No. 99-00377

Dear Mr. Waddell:

BellSouth Telecommunications, Inc. ("BellSouth") is in receipt of the September 7, 2000 letter submitted on behalf of ICG Telecom Group, Inc. ("ICG") concerning the recent decision of the United States Court of Appeals for the Fifth Circuit in *Southwestern Bell v. Waller Creek Communications*, Docket No. 99-50752 (5th Cir. Aug. 21, 2000). BellSouth disagrees with ICG's contention that the issue before the Fifth Circuit is "the same issue now before the Authority...."

The issue before the Authority concerns the extent to which BellSouth can be required as part of an arbitrated interconnection agreement to combine previously uncombined network elements on behalf of ICG. The Fifth Circuit's decision has no bearing on this issue. The Fifth Circuit's decision rests exclusively on its determination that Southwestern Bell had made a prior agreement to combine previously uncombined network elements in an interconnection agreement with AT&T. The issue was whether another company could, under the FCC's "pick-and-choose" rule, opt into that negotiated provision. Thus, the Fifth Circuit's decision must be read in proper context -- namely that a voluntary agreement to combine previously uncombined network elements is not "prohibited" under the Telecommunications Act of 1996 ("1996 Act"). Of course, that is not the situation presently confronting the Authority.

To the extent that ICG seeks to read the Fifth Circuit's language expansively to suggest that requiring BellSouth to combine previously uncombined elements would not be "prohibited" by the 1996 Act, ICG is simply wrong. The Eighth

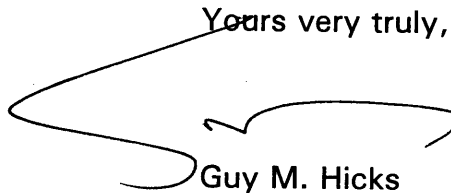
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Circuit was clear on this point in vacating the FCC's rules that purported to obligate incumbents to combine previously uncombined network elements on behalf of a requesting carrier. In so doing, the Eighth Circuit noted that "Congress has directly spoken on the issue of who shall combine previously uncombined network elements. It is the requesting carriers who shall 'combine such elements.' It is not the duty of the ILECs to 'perform the functions necessary to combine unbundled network elements in any manner' as required by the FCC's rule." *See Iowa Utilities Board v. FCC*, Case No. 96-3321 (8th Cir. July 18, 2000). The Eighth Circuit reiterated its earlier decision to vacate the FCC rules, holding that those rules "violate the plain language of the statute."

Importantly, the Tennessee Regulatory Authority was a party to the proceedings before the Eighth Circuit and is bound by the Eighth Circuit's decision in that case. The Eighth Circuit expressly held that the FCC's rules that required BellSouth to combine previously uncombined network elements violated the 1996 Act. If it were unlawful for the FCC to adopt a rule requiring BellSouth to combine previously uncombined network elements, it would be equally unlawful for the Authority to seek to impose the same requirement as part of this arbitration.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Guy M. Hicks". The signature is stylized with a large, sweeping initial "G" that loops around the first part of the name.

cc: Henry Walker, Esquire

CERTIFICATE OF SERVICE

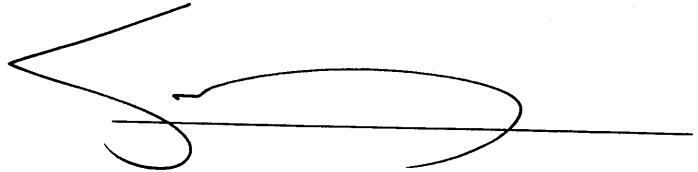
I hereby certify that on September 18, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand
☒ Mail
☐ Facsimile
☐ Overnight

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A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a large loop.